

### § 3007.3

### 39 CFR Ch. III (7–1–12 Edition)

or in performance of its functions under title 39 of the U.S. Code. Information, documents, and things the Postal Service may be required to provide, include, but are not limited to, paper hard copy and electronically stored data and materials—including writings, notes, e-mails, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form; or any tangible things.

#### § 3007.3 Data or information requests.

(a) The Commission or its authorized representative may issue data or information requests to the Postal Service seeking information, documents, and things covered by § 3007.2. A data or information request shall describe the documents, information, and things sought, briefly explain the reason for the request, and specify a timeframe for receiving the requested information and materials.

(b) The Commission or its authorized representative may issue data or information requests to third parties seeking any information, document or thing. A data information request shall describe the documents, information and things sought, briefly explain the reason for the request, and specify a timeframe for receiving the requested materials.

(c) Any person may request that the Commission issue a data or information request by filing a motion with the Commission, pursuant to § 3001.21 of this chapter, which describes the documents, information, and things sought, explains the reasons the Commission should make the request, and includes a statement of how the materials sought are relevant and material to the Commission's duties under title 39 of the U.S. Code.

#### § 3007.10 Submission of non-public materials under seal.

(a) Non-public materials shall not be filed electronically pursuant to § 3001.9 of this chapter, but shall be filed in sealed envelopes clearly marked “Confidential. Do Not Post on Web.” The

person filing the non-public materials shall submit two copies consisting, where practicable, of two paper hard copies as well as two copies in easily usable electronic form such as compact discs (CDs) or digital video discs (DVDs) of the non-public materials which shall also be clearly marked “Confidential. Do Not Post on Web.” Spreadsheets submitted in electronic form shall display the formulas used, their links to related spreadsheets, and shall not be password protected. All workpapers or data shall be submitted in a form, and be accompanied by sufficient explanation and documentation to allow them to be replicated using a publicly available PC application. Each page of any paper hard copy non-public materials submitted shall be clearly marked as non-public.

(b) The person submitting the non-public materials shall also file an electronic public (redacted) copy of the non-public materials pursuant to § 3001.9 of this chapter. The electronic public (redacted) copy of the materials which are not spreadsheets, data files, or programs must be submitted in a searchable electronic format, but need not be submitted in its native format. As part of its publicly available electronic filing, the Postal Service must appropriately redact materials that contain both public and non-public information. For example, the Postal Service may not identify a whole page or a whole table as non-public materials if the page or table contains both public and non-public information, but must redact only the information it claims to be non-public. If practicable, the Postal Service shall sequentially number each page of the materials identified as non-public.

(c) The Postal Service or third party shall use the graphical redaction (blackout) method for all redacted materials. Should the Postal Service wish to use any other method, it must state with particularity the competitive harm associated with use of the graphical redaction method to justify the use of any other method, and indicate the number of lines or pages removed at each redaction.

(d) The Postal Service or third party shall mark each page, item, and thing,

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or portion thereof, that it seeks to protect from disclosure in a manner reasonably calculated to alert custodians to the confidential nature of the information or materials.

### **§ 3007.20 Application for non-public treatment.**

(a) Whenever the Postal Service files non-public materials with the Commission, it shall at the same time file an application for non-public treatment under § 3007.21.

(b) Before the Postal Service files non-public materials with the Commission which the Postal Service has reason to believe may implicate a third-party proprietary interest, the Postal Service shall inform each such third party:

(1) Of the nature and scope of the filing with the Commission, including the pertinent docket, and

(2) That it may address its confidentiality concerns directly with the Commission.

(c) A third party with a proprietary interest in the materials may, if it deems necessary, independently seek non-public treatment under § 3007.22.

### **§ 3007.21 Content of the Postal Service application for non-public treatment.**

(a) Whenever the Postal Service files non-public materials with the Commission, it must submit an application for non-public treatment that clearly identifies all non-public materials and describes the circumstances causing them to be submitted to the Commission.

(b) An application for non-public treatment is to fulfill the burden of persuasion that the non-public materials should be withheld from the public.

(c) The application for non-public treatment must include a specific and detailed statement setting forth:

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials,

or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

(5) At least one specific hypothetical, illustrative example of each alleged harm;

(6) The extent of protection from public disclosure deemed to be necessary;

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

(8) Any other factors or reasons relevant to support the application.

### **§ 3007.22 Content of third-party application for non-public treatment.**

(a) The application for relief from public disclosure submitted by a party other than the Postal Service must clearly identify all materials believed to be protected from disclosure.

(b) The application for non-public treatment must include a specific and detailed statement setting forth:

(1) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

(2) Particular identification of the nature and extent of the harm alleged and the likelihood of such harm; and

(3) Any other factors or reasons relevant to support the application.

### **§ 3007.23 Treatment of non-public materials.**

The Commission or its authorized representative will not publicly disclose or grant access to non-public materials except as provided in the rules of this part.